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10/075,871	02/13/2002	John C. Delo	2180.1	1152

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Michalik & Wylie, PLLC
Suite 193
704-228th Avenue NE
Sammamish, WA 98074

EXAMINER

VO, TED T

ART UNIT PAPER NUMBER

2191

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/075,871	Applicant(s) DELO ET AL.	
	Examiner Ted T. Vo	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/13/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the communication filed on 01/09/2006.

In view of the Terminal Disclaimer filed on 01/09/06, double patenting rejection over the U. S. Patent No. 6,427,227 B1, is maintained because Applicants' filing TD is not approved. Applicants' record shows the filing is over a different US pat No. 6,427,277 B1.

The blank in page 11 of the specification requires updating.

Claims 1-35 are pending in the application.

Response to Arguments

2. Applicants' arguments to Claims 1-35 have been fully considered. However, Applicants' arguments do not comply with the 1.111(c) or/and MPEP 714.04 requirements.

It should be noted that this application attempts to broaden the scope of a method for repairing a damage of an installation. Because the scope is broad, it meets a manual activity, in which a user can use registry editor to verify a needed resource of a program application already installed in a computer's using a standard Microsoft Windows. The Registry Editor is an advanced tool, known before the effective filing date of the application, that enables a user to change settings in the computer system registry, which contains information about how the computer runs. If an error is made in the registry, supposed by a damaged installation, the computer may become nonfunctional. If this happens, the user can restore the registry to its previous state when the user last successfully started his computer. For example, the user can search through the Registry tree to look for a known key or a file required by an application. If a user cannot find this resource, he can manually set the needed resource to initiate an installation. This manual activity perform the steps claimed in Claim 1 just because the claim is mere preemption of such an activity, ***"if the needed resource is not available to the program, automatically initiating an***

installation procedure without manual termination of the program to make the needed resource available to the program.

The term ***automatically*** herein is clearly to replace a manual activity only. It does not do anything difference.

In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.).

In the Applicants' remark, Applicants contend that Rudorfer does not disclose claim 1. For example, Applicants stated, "in contrast, claim 1 recites receiving a request to verify that a needed resource is available to an executable software program that is already installed, Quite different from Rudorfer". Especially Applicants argued, "Rudorfer is wholly unaware of any procedure for dealing with request, etc (Remarks p. 14: line15 → p. 15:1-3).

Examiner disagrees. As noted above, while the scope of the claim is broadened, the Rudorfer's discussions will meet the generic claimed functionality. It should be noted that any execution in a computer is performed by a request. The execution would be performed by an input via an outsider manually or through parameters via an invocation internally. Such an input is a request. Rudorfer includes a manual act and programming acts in an installation that includes reparation. In page 80, see, "3. Repair the file systems if they are inconsistent" and in page 82, see "If some files or partitions have been changed, our tool repairs the installation automatically and quickly without user interaction". Without a request, there would not be an act of reparation as shown in the "Administration Task" of p. 82. Particularly, with the statement, "files or partitions have been changed" and the discussion of the system registry, it reveals that the tool detects "needed resource" caused by a prior damaged installation.

All other Applicants arguments have been also considered. For example, Applicants contend Rudorfer is directed to a system for managing the deployment of application (Remarks: p.13); Rudorfer requires user intervention in initiating the installation process..., Requiring the user intervention to begin

Art Unit: 2191

the process of installations is not the same as automatically initiating an installation procedure... (Remarks, p. 15) etc. It should be noted that Rudorfer discusses various things in installation and reparation. An automatic act that performs for the manual act would not patentable over the manual act (See *In re Venner* above). Moreover, because Applicant's claims cover a broad scope of the reparation, the discussion of the Rudorfer's tool that uses to repair an installation meets such a scope.

Applicants' arguments to dependent Claim 3 and other independent claims 12, 21, 26, 30, have been considered, however, the arguments fail to comply with the 1.111(c) or/and MPEP 714.04 requirements.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 12, 21, 26, 30, 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being respectively unpatentable over claim 1 of U. S. Patent No. 6,427,227 B1. See prior action.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2191

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claim 1-35 are rejected under 35 U.S.C. 102(a) as being anticipated by Gottfried Rudorfer (hereinafter: Rudorfer), "Managing PC Operating Systems with a Revision Control System", 10-1997.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Rudorfer discloses,

A computer-implemented method, comprising:

receiving a request to verify that a needed resource is available to an executable software

program that is already installed (See p. 79, See p. 80, the perl script does 1-8 steps; see

Administration tasks, refer to term "repair": repair means acting on a program/software/files that are

already installed) ***the needed resource comprising at least one resource needed by the program***

(Figure 1, 'Install Service' pointing to registry and File system);

determining whether the needed resource is available to the program (See p. 82, both Linux or

Windows 95 are performing parameter configuration. For example, in Windows 95, key ...\\Enum\\

ISAPNP\\ is needed resource, or see Table 1), ***and if the needed resource is not available to the***

program (We generate, for example, the reference shows the string in the registry Key is generated (P.

82, section Windows 95)), ***automatically initiating an installation procedure without manual***

termination of the program to make the needed resource available to the program (See the whole

reference, where the purpose of this reference, is addressed in the motivation (p. 79), and particularly the

perl script and 8 steps (p. 80)).

As per Claim 2: Rudorfer discloses, *The method of claim 1 wherein the resource comprises a registry key,*

and wherein determining whether the needed resource is available further comprises, querying a registry.

(See Table 1. Refer to registry of Windows 95, see regedit).

Art Unit: 2191

As per Claim 3: Rudorfer discloses, *The method of claim 1 wherein the resource comprises a file, and wherein automatically initiating an installation procedure further comprises, installing the file at a storage location accessible to the executable software program* (See p. 80, refer to user's computer, for example, see motivation, Linux software on the PC).

As per Claim 4: Rudorfer discloses, *The method of claim 1 wherein if the needed resource is available to the executable software program, returning existence verification data to the executable software program* (See p. 80, the perl script, Repair file system, step 6, performed by the perl script).

As per Claim 5: Rudorfer discloses, *The method of claim 4 wherein returning existence verification data comprises, returning a location of the resource to the executable software program* (See p. 80, include 8 steps and refer to root directory; see directory of Client in Figure 1).

As per Claim 6: Rudorfer discloses, *The method of claim 4 wherein returning existence verification data comprises, returning a resource path* (See p. 80, include 8 steps and refer to root directory, or see table 1, are resource path).

As per Claim 7: Rudorfer discloses, *The method of claim 1, wherein receiving a request to verify that a needed resource is available to an executable software program includes receiving a parameter identifying the resource* (See p. 80, include 8 steps and refer to root directory, or see Implementation of Upload Programs, and see p. 82, table 1, and sec. Linux and Windows 95).

As per Claim 8: Rudorfer discloses, *The method of claim 7, wherein determining whether the needed resource is available comprises, accessing a database based on the parameter identifying the resource to determine an expected location of the needed resource* (See p. 80, refer to root directory, and further see p. 82, table 1, particularly sec. Windows 95, the HKEY_LOCAL_MACHINE\...\).

As per Claim 9: Rudorfer discloses, *The method of claim 8 wherein determining whether the needed resource is available to the executable software program further comprises, attempting to access the resource at the expected location* (Refer sec. Window 95, PC using the regedit).

As per Claim 10: Rudorfer discloses, *The method of claim 1 wherein automatically initiating an installation procedure comprises, prompting the user to provide a source of the needed resource* (See p. 79, sec Motivation, and see 8 steps in p. 80).

Art Unit: 2191

As per Claim 11: Rudorfer discloses, *A computer-readable medium having computer-executable instructions for performing the method of claim 1* (refer to the rationale address in Claim 1).

As per Claim 12: Rudorfer discloses, *In a computing environment, a system comprising:*
an executable software program including a first set of executable code that is already installed and a second set of executable code, the second set of executable code (installed filed system, operating system and application (p.79: Motivation) comprising at least one resource that is needed to provide functionality to the first set of executable code; and
an installer program (p.80, the perl script and 8 steps) connected for communication with the first executable software program to receive a request for installation information of the second set of executable code, the installer program configured to determine the installation information, and when the installation information indicates that the second set of executable code is not installed, the installer program further configured to automatically install the second set of executable code to make the second set of executable code available to the first set of executable code (refer to repair file).

The Claim has the limitation corresponding to the steps of Claim 1. See rationale addressed in Claim 1 above. It should be noted that the limitations executable software program and installer program are mere code. The functionality of reparation and installation shown in Rudorfer has the type of software performance.

As per Claim 13: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code comprises a product, and wherein the second set of executable code corresponds to a feature of that product. See p. 79, sec. Comparison with other tools; see Figure 1, where the Sever install a product such as Linux software or Microsoft Windows 95; from a repository to the Client PC.*

As per Claim 14: Rudorfer discloses, *The system of claim 13 wherein the product includes a package file that describes at least one relationship between the feature and the at least one resource (See p. 79, sec. Comparison with other tools, Implementation; see Figure 1).*

As per Claim 15: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code comprises an application program, and wherein the second set of executable code comprises a*

Art Unit: 2191

component including a collection of resources for that application program (See whole reference. Refer Linux software or Microsoft Windows 95 as product and file system (Figure 2) as a collection of resource).

As per Claim 16: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code provides a token that includes data identifying the second set of executable code in the request for information received by the installer program (See p. 81-82, Implementation of the Revision Control Sytem, Check-in, Check-out, Registry within User privileges; see sec. Windows 95).*

As per Claim 17: Rudorfer discloses, *The system of claim 12 wherein the token corresponds to a keypath, and wherein the installer program determines the installation information by checking for the existence of a file at a location based on the keypath (See p. 80, ; 8 steps; see p. 82, sec. Windows 95, and table 1, sec. Check-in, check-out, etc.;).*

As per Claim 18: Rudorfer discloses, *The system of claim 12 wherein the second set of executable code comprises a component comprising a collection of resources, one of the resources comprises a key file, and wherein the first set of executable code provides data identifying the key file in the request for information received by the installer program (Refer to file system objects, and see sec Windows 95).*

As per Claim 19: Rudorfer discloses, *The system of claim 18 wherein the key file comprises a file system file, and wherein the installer program determines the installation information of the second set of executable code by looking for the existence of the key file at a storage location (See installation script and 8 steps in p. 80).*

As per Claim 20: Rudorfer discloses, *The system of claim 18 wherein the key file comprises registry data, and wherein the installer program determines the installation information based on the registry data (Refer to Registry, and see Figure 1, and Table 1).*

As per Claim 21: Regarding, *A computer-readable medium having computer-executable instructions, comprising:*

receiving a resource identifier comprising at least one argument from a first set of executable code, the resource identifier being associated with a second set of executable code including at least one resource that provides functionality to the first set of executable code;

Art Unit: 2191

accessing a database based on the resource identifier to retrieve an expected location of at least part of the second set of executable code; and verifying the existence of the at least part of the second set of executable code at the expected location.

The Claim has the limitation corresponding to the steps of Claim 1. See rationale addressed in Claim 1 above.

As per Claim 22: Rudorfer discloses, *The computer-readable medium of claim 21, further comprising, verifying the existence of the at least part of the second set of executable code at the expected location, and if verification is negative, installing the second set of executable code at the expected location (See 8 steps, refer to repair in the step 3).*

As per Claim 23: Rudorfer discloses, *The computer-readable medium of claim 21, wherein the resource identifier comprises a component code (Refer to HKEY, the path of file system objects).*

As per Claim 24: Rudorfer discloses, *The computer-readable medium of claim 21, wherein the resource identifier comprises a feature identifier which identifies at least one portion of the first set of executable code (Refer to HKEY, the path of file system objects).*

As per Claim 25: Rudorfer discloses, *The computer-readable medium of claim 21, wherein accessing the database to identify the expected location of the resource includes querying the database based on data in the resource identifier (See file system objects, Figure 2).*

As per Claim 26: Regarding, *In a computing environment, a system comprising, executable code having a feature, the feature comprising a component including a key file which supports the feature; and an installer for repairing the executable code if the key file becomes unavailable to the executable code, the installer:*

- (a) receiving from the executable code a request for a path to the key file;*
- (b) identifying an expected location for the key file in the computing environment;*
- (c) attempting to verify the existence of the key file at the expected location in the computing environment;*
- and*

Art Unit: 2191

(d) in response to a failure to verify the existence of the key file at the expected location, automatically initiating an installation of the key file to the expected location without manual termination of the executable code.

See rationale in Claim 1.

As per Claim 27: Rudorfer discloses, *The system of claim 26, wherein in response to successfully verifying the existence of the key file at the expected location, the installer provides data that identifies the expected location to the executable code (Refer to Registry).*

As per Claim 28: Rudorfer discloses, *The system of claim 26, wherein the key file corresponds to a resource of a component (Refer to keys used in Registry, for example table 1, the HKEY_...).*

As per Claim 29: Rudorfer discloses, *The system of claim 28, wherein the component corresponds to a feature (Refer to keys used in Registry, for example HKEY_..., and its path/subclass).*

As per Claim 30: Rudorfer discloses, *In a computer system, a method comprising, receiving a call from an installed application, the call including a resource identifier; and in response to receiving the call: 1) determining if a resource corresponding to the resource identifier exists at an expected location, and if the resource does not exist at the expected location, automatically initiating an installation of the resource to the expected location; and 2) returning information corresponding to the existence of the resource at the expected location.*

Claim has the functionality corresponding to the limitation of Claim 1. See Rationale as addressed in Claim 1 above.

As per Claim 31: Rudorfer discloses, *The method of claim 30 wherein returning information corresponding to the existence of the resource at the expected location comprises returning a path to the expected location.* See Rationale as addressed in Claims 4-5 above.

As per Claim 32: Rudorfer discloses, *The method of claim 30 wherein determining if the resource corresponding to the resource identifier exists includes querying a database to obtain the expected location of the key file.* See Rationale as addressed in Claim 2 above.

Art Unit: 2191

As per Claim 33: Rudorfer discloses, *The method of claim 32, wherein if the expected location cannot be found by querying the database, automatically initiating an installation of the resource to a location and adding that location to the database as the expected location.* See Rationale as addressed in Claim 2 above.

As per Claim 34: Rudorfer discloses, *The method of claim 30 wherein the resource identifier corresponds to a key file, and wherein determining if a resource corresponding to the resource identifier exists at an expected location comprises obtaining a path to that key file* (Refer to Registry structure).

As per Claim 35: Rudorfer discloses, *A computer-readable medium having computer-executable instructions for performing the method of claim 30.* See Rationale as addressed in Claim 1 above.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

Art Unit: 2191

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ted T. Vo
Primary Examiner
Art Unit 2191
March 17, 2006